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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

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OFFICE OF PETITIONS

In re Application of :
Dasseux et al. :
Application No. 10/596,047 : ON APPLICATION FOR
Filed: June 21, 2006 : PATENT TERM ADJUSTMENT
Attorney Docket No. PC20667 :
Title: KETONE COMPOUNDS AND :
COMPOSITIONS FOR CHOLESTEROL :
MANAGEMENT AND RELATED USES :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(B)" filed June 26, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is fourteen (14) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The request for review of the patent term adjustment is **Granted to the extent indicated.**

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

On March 31, 2009, the Office mailed the Determination of Patent Term Extension under 35 U.S.C. 154(b) in the above-identified application. The Notice stated the patent term adjustment to date is 0 days. Applicants dispute the calculation.

Applicants contend a 132 day adjustment is required for failure by the Office to mail at least one of the notifications under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements under 35 U.S.C. 371, pursuant to 37 CFR §1.702(a)(1). A restriction requirement was mailed on December 31, 2007, which applicants contend is 14 months and 132 days after the application fulfilled the requirements of 35 U.S.C. 371.

However, a review of the record shows that the requirements of 35 U.S.C. 371 were fulfilled on June 24, 2006. As early commencement was not requested, the last of 371 requirements to be completed was commencement at 30 months on June 24, 2006. Thus, the restriction requirement on December 31, 2007 was mailed 14 months and 129 days after fulfillment.

The total number of days of Office delay at the time of the mailing of the Notice of Allowance is 129 days.

Applicants also state that reductions in the amount of 88 and 30 days are required. A review of the record confirms applicants' statement. An 88-day and 30-day period for reduction should have been taken based upon 37 CFR §1.704(b). 37 CFR §1.704(b) provides:

an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

In the first instance the reply to the restriction requirement mailed December 31, 2007 was not received until June 27, 2008, three months and 88 days after the mailing of the restriction requirement.

In the second instance, a non-final Office action was mailed on September 30, 2008. A response was not filed until January 29, 2009. Pursuant to 37 CFR 1.704(b) the application is subject to 30 day reduction for applicant delay for the period beginning on December 31, 2008 and ending on January 29, 2009.

The total number of days of applicant delay at the time of the mailing of the Notice of Allowance is 118 (88+30) days.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 11 (129-118) days.

As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant, at (571) 272-3215.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Day : Saturday
Date: 3/20/2010

PALM INTRANET

Time: 13:45:36

PTE Calculations for Application: 10/596047

Application Filing Date:	06/21/2006	PTO Delay (PTO):	0
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTE (days):	11
PTO Delay Adjustment:	11		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
69	03/20/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	129		
68	03/20/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		88	
67	03/20/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		30	
51	03/31/2009	MAIL NOTICE OF ALLOWANCE			
50	03/28/2009	ISSUE REVISION COMPLETED			
49	03/27/2009	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
48	03/27/2008	DOCUMENT VERIFICATION			
47	03/27/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
46	03/27/2009	CASE DOCKETED TO EXAMINER IN GAU			
45	03/25/2009	EXAMINER'S AMENDMENT COMMUNICATION			
44	03/25/2009	NOTICE OF ALLOWABILITY			
43	01/29/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
42	02/13/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
41	02/10/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
40	02/05/2009	DATE FORWARDED TO EXAMINER			
39	01/29/2009	RESPONSE AFTER NON-FINAL ACTION			
38	01/29/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
37	01/29/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	09/30/2008	MAIL NON-FINAL REJECTION			
35	09/26/2008	NON-FINAL REJECTION			
21	07/30/2008	DATE FORWARDED TO EXAMINER			

20	06/27/2008	RESPONSE TO ELECTION / RESTRICTION FILED			
19	06/27/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
18	07/17/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
17	07/16/2008	CORRESPONDENCE ADDRESS CHANGE			
16	12/31/2007	MAIL RESTRICTION REQUIREMENT			
15	12/26/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
13	10/24/2007	CASE DOCKETED TO EXAMINER IN GAU			
12	07/06/2007	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
8	07/05/2007	PG-PUB ISSUE NOTIFICATION			
6	04/18/2007	APPLICATION DISPATCHED FROM OIPE			
5	06/24/2006	371 COMPLETION DATE			
4	04/05/2007	SENT TO CLASSIFICATION CONTRACTOR			
3	04/05/2007	NOTICE OF DO/EO ACCEPTANCE MAILED			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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